



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: FEBRUARY 15, 2023

IN THE MATTER OF:

Appeal Board No. 626597

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective June 23, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. By decision filed October 25, 2022 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. Further testimony and evidence should be taken on the circumstances under which the claimant's employment ended before the case is decided. The factual issue in the initial determination is that the claimant resigned because he was reassigned to be a supervisor due to restructuring and there was no change in the terms of his employment. The parties are hereby placed on notice that at the remand hearing, the Administrative Law Judge shall also consider whether the claimant took reasonable steps to preserve his employment before resigning.

To that end, the claimant shall be questioned about what, if any, action he took to bring his concerns, including those relating to a perceived lack of duties, to the employer before he resigned. He should also be confronted with the file copy of his resignation letter and asked why it makes no mention of

these concerns. The document should then be entered into evidence. The claimant should also be questioned about what he discussed with the employer at the exit interview referenced in his resignation letter.

At the remand hearing, the employer is directed to produce Donald Campbell, Interim Director of Security, and Charmaine McFarlane, Human Resources Business Partner. Mr. Campbell should be questioned about what, if any duties, the claimant was given when he returned to his former security supervisor position; who advised him of these duties; whether those duties differed from those he had performed previously as a security supervisor and, if so, how; whether the claimant complained to him or any other member of management before quitting about not having any duties; and what, if any action, was then taken to address such a complaint. Ms. McFarlane also shall be questioned about what recourse the claimant had if he was not given any duties to perform and how his concerns could have been addressed so that he could continue in his employment. Both should be questioned about what was discussed at the claimant's exit interview. If they were not present at that interview, the employer is directed to produce all persons who did attend, who then shall be questioned by the Judge about what transpired at the interview. The employer is also directed to produce any other member of management or Human Resources who notified the claimant of his duties after he returned to the security supervisor position during the restructuring, or to whom the claimant voiced his concerns about his position prior to resigning.

The parties may produce any other relevant witnesses and documents. The Judge may take any other testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge is rescinded; and it is further

ORDERED, that the case shall be remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER